

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff,

V.

CIVIL ACTION NO. 05-11614-WGY

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,

Defendants.

**SUPPLEMENTAL AFFIDAVIT OF TIMOTHY J. MALIK
IN SUPPORT OF
PLAINTIFF JOHN HANCOCK LIFE INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

I, Timothy J. Malik, hereby state under oath that:

1. I am employed as an Assistant Vice President in the Real Estate Finance Group (formerly named the “Real Estate Investment Group”) of plaintiff John Hancock Life Insurance Company (“John Hancock” or “Hancock”). I have been employed by John Hancock in various positions since May 19, 1986. As of the summer of 2004, I was a Senior Investment Officer in Hancock’s Real Estate Investment Group. My primary duties and responsibilities consist of processing and approving post closing borrower requests and loan assumptions; assisting personnel in John Hancock’s field offices with originating and

structuring commercial loans; making an initial assessment as to the strength of a particular loan investment; developing, applying and assessing loan underwriting criteria; and assisting with the loan approval process. I was personally involved in the negotiation, underwriting and approval of the \$32 million loan (the "Loan") by John Hancock for the Avenel at Montgomery Square apartment complex (the "Avenel Apartments") that forms the subject matter of this litigation.

2. John Hancock is one of the nation's leading insurance companies, providing a broad array of insurance and investment products to retail and institutional customers, primarily in North America. The Real Estate Finance Group at John Hancock, in particular, provides commercial mortgage loans for substantial properties, including, *inter alia*, large residential apartment complexes.

3. John Hancock has calculated its economic losses resulting from Montgomery Partners' breach of the Loan Commitment (not including attorney's fees, which are recoverable pursuant to Conditions 21 and 30(d) of the Loan Commitment) to be approximately \$4,700,000. John Hancock's lost opportunity damages, which are summarized in Exhibit A to this affidavit, reflect the differential between the amount that Hancock would have received from Montgomery Partners over the life of the Loan minus the amount that Hancock would receive on the same funds if they were invested in ten-year United States treasury bills as of August 1, 2005 (*i.e.*, the date by which Montgomery Partners was required to close the Loan), discounted to present value using a compounded-monthly discount rate equal to the ten-year United States treasury converted to its monthly equivalent. John Hancock also incurred other Loan-related expenses (including hedge costs and document preparation fees) that are not

included in this calculation. John Hancock believes that this calculation represents a fair and reasonably accurate estimate of Hancock's actual damages because Hancock already had substantial liquidity awaiting investment as of August 2005, and Montgomery Partners' failure to close the Loan did not create any additional real estate investment opportunities for John Hancock.

Signed under the pains and penalties of perjury this 28th day of February, 2006.

/s/ Timothy J. Malik
Timothy J. Malik

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 1, 2006.

/s/ Brian A. Davis

Brian A. Davis

Exhibit A

EXHIBIT A**Loan 6518467**

Date of Target Closing	8/1/05
Maturity Date	8/1/15
Loan Term	120.00
Loan Amount	32,000,000.00
Monthly Constant	195,574.96
Balloon Payment	26,963,760.00 (include interest due)
Today's 10-Yr.Treasury Rate	0.043 (formatted as percent)
Discount Rate	0.003551648
PV P&I Constant	\$19,081,437.97
PV of Balloon Pmt.	\$17,620,289.26
Sum of PV's	\$36,701,727.22
Loss of Interest/Opportunity	\$4,701,727.22
 TOTAL Loss of Interest/Oppor.	 \$4,701,727.22